

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

S.B. NO. 211, S.D. 1, RELATING TO FORENSIC IDENTIFICATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, March 27, 2015

TIME: 3:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly supports this bill with amendments.

The purpose of this bill is to clarify the grading of the offense of refusing to provide a required blood specimen, buccal swab sample, or print impression for forensic identification by making an intentional or knowing violation a class C felony offense, and a negligent or reckless violation a misdemeanor.

Section 844D-111(a), Hawaii Revised Statutes, provides that a person commits the offense of refusal to provide specimen for forensic identification if the person is required to provide any blood specimens, buccal swab samples, or print impressions, and intentionally or knowingly refuses or fails to do so after receiving written notice of the requirement. The problem, however, is that section 844D-111, when establishing the grade and penalty for the offense under subsection (b), only provides that a negligent or reckless violation shall be a misdemeanor offense. There is no penalty provision for an intentional or knowing violation, as set out in the statute.

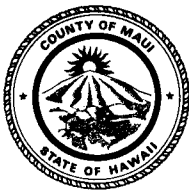
All individuals convicted of a felony offense are required to submit DNA buccal swab samples for the purpose of establishing a DNA database that can be used to solve crimes, including cold cases, and exonerate the innocent. Under current law, however, if a felon refuses to comply with the law, the only mechanism to obtain compliance is the threat of a misdemeanor prosecution for a negligent or reckless violation. For offenders who have already been convicted of felony offenses, an additional misdemeanor charge is not likely to deter their actions, or induce compliance with the requirements of the law. An intentional or knowing refusal to

provide a DNA buccal swab sample should amount to a felony offense because a felony level offense will be more likely to induce compliance by offenders.

This bill makes an intelligent or knowing refusal to comply with the forensic identification requirements a class C felony. It makes a negligent or reckless violation a misdemeanor offense.

While the Department supports the intent of this bill, it recommends that the bill be amended to separate the misdemeanor and felony offenses into completely different sections of the law. The offenses will be more clear, and decrease the chance of confusion when charging and tracking the offenses through the criminal justice and criminal history systems. Such confusion would be likely if this bill continues to include the felony and misdemeanor offenses under one section of law. The Department recommends this bill be amended to reflect the provisions of the attached Senate Bill No. 2253, S.D. 1, of the 2014 Regular Session.

The Department respectfully requests the passage of this bill with the proposed amendments.



DEPARTMENT OF THE PROSECUTING ATTORNEY
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TESTIMONY
ON
SB 211, SD 1 - RELATING TO FORENSIC IDENTIFICATION

March 27, 2015

The Honorable Karl Rhoads
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members
House Committee on Judiciary

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** SB 211, SD 1 - Relating to Forensic Identification. The bill specifies that an intentional or knowing failure to provide DNA samples is a class C felony, and a reckless or negligent failure to provide DNA samples is a misdemeanor.

The current law contemplates intentional or knowing failures to provide DNA samples, but only provides that reckless or negligent failures are misdemeanors. The law makes no reference to the level of the offense for an intentional or knowing failure to provide DNA samples. This bill is needed to correct this deficiency.

While we strongly support this bill, we request that the original Section 1 of this bill be reinserted into the bill. The Senate Committee on Judiciary and Labor deemed Section 1 unnecessary. However, without Section 1, there would be no specified method to collect buccal swab samples and print impressions from individuals on other release, including those who unconditionally completed their sentences. In our case, the Second Circuit Court ruled that because there was no provision for collecting DNA samples and print impressions for those who completed their sentences, the Legislature did not intend that DNA samples and print impressions be collected from such individuals.

We believe, as was confirmed by the Senate Committee on Judiciary and Labor's committee report (Senate Stand. Comm. Rep. No. 662), that the legislature intended that all persons convicted of a felony be required to provide DNA samples and print impressions. A copy of the original SB 211 is attached. We further believe that the deletion of the provision for collecting DNA samples and print impressions from persons who are on "other release," including unconditional release upon completion of the sentences, from the original law was an oversight. This bill is the means to correct this oversight.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill **WITH OUR PROPOSED AMENDMENT**. We ask that the committee **PASS SB 211, SD 1 WITH THE AMENDMENT**.

Thank you very much for the opportunity to provide testimony on this bill.

JAN 23 2015

A BILL FOR AN ACT

RELATING TO FORENSIC IDENTIFICATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 844D-35, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§]~~ §844D-35 ~~[§]~~ Collection from persons on probation,
4 parole, or other release. (a) A person, except for any
5 juvenile, shall provide buccal swab samples and print
6 impressions and, if required pursuant to this chapter, blood
7 specimens if:

8 (1) The person is on probation ~~[or]~~, parole, or other
9 release, including final unconditional release upon
10 satisfaction of the person's criminal sentence, for
11 any [felony] criminal offense, whether or not [that
12 crime or] the offense is one set forth in section
13 844D-31(a);

14 (2) The person has a record of any past or present
15 conviction of a qualifying offense described in
16 section 844D-31 or has a record of any past or present
17 conviction or adjudication in any other court,



S.B. NO. 211

1 including any state, federal, or military court, of
2 any offense that, if committed or attempted in this
3 State, would have been punishable as an offense
4 described in section 844D-31; and

5 (3) The person's blood specimens or buccal swab samples,
6 and print impressions authorized by this chapter are
7 not in the possession of the department or have not
8 been recorded as part of the state DNA database and
9 data bank identification program.

10 (b) The person shall have any required specimens, samples,
11 or print impressions collected within [~~twenty working~~] five
12 calendar days of being notified by the court, or a law
13 enforcement agency or other entity authorized by the department.
14 The specimens, samples, or print impressions shall be collected
15 in accordance with section 844D-21 at a correctional facility or
16 a state, county, private, or other facility designated for
17 [~~this~~] the collection."

18 SECTION 2. Section 844D-111, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§844D-111 Refusal or failure to provide specimen for
21 forensic identification. (a) A person commits the offense of



1 refusal or failure to provide specimen for forensic
2 identification if the person is required by this chapter to
3 provide any blood specimens, buccal swab samples, or print
4 impressions and intentionally ~~[ex]~~, knowingly, negligently, or
5 recklessly refuses or fails to provide any of the required blood
6 specimens, buccal swab samples, or print impressions after the
7 person has received written notice from the department, the
8 department of public safety, any law enforcement personnel, or
9 officer of the court that the person is required to provide each
10 and every one of the blood specimens, buccal swab samples, and
11 print impressions required by this chapter.

12 (b) ~~[Any]~~ Refusal or failure to provide specimen for
13 forensic identification is a class C felony unless a person
14 [who] negligently or recklessly fails to comply with this
15 section [shall be guilty of], in which case it is a
16 misdemeanor."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.
20

INTRODUCED BY: 



S.B. NO. 211

Michael



S.B. NO. 211

Report Title:

Crime; Forensic Identification; DNA Testing; Felons

Description:

Specifies the requirements of DNA sample collection from subject criminal offenders that are released on parole, probation, or other release. Makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Justin F. Kollar
Prosecuting Attorney

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**TESTIMONY IN SUPPORT OF
SB211, SD1 – RELATING TO FORENSIC EVIDENCE**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary
March 27, 2015, 3:00 p.m., Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in STRONG SUPPORT of SB211 SD1, Relating to Forensic Identification, WITH AMENDMENTS AS RECOMMENDED BY THE COUNTY OF MAUI DEPARTMENT OF THE PROSECUTING ATTORNEY. The Bill specifies that the intentional or knowing failure to provide DNA samples is a class C felony, and the reckless or negligent failure to do so is a misdemeanor.

The current law contemplates intentional or knowing failure to provide DNA samples, but only provides that reckless or negligent failure to do so is a misdemeanor. The law does not reference a level of offense for the intentional or knowing failure to do so. This Bill would correct that loophole.

While we strongly support this Bill, we join in Maui's request that the original Section 1 of this Bill be re-inserted. Without this language, there will be no specified manner of collection for buccal swab samples and print impressions from individuals on other forms of release, including those who have completed their sentences. Maui has unsuccessfully litigated the issue of the legislative intent of this law. Although the intent is clear from the original committee reports, the language of the law itself fails to reflect it. This Bill would rectify that deficiency.

For these reasons, we are in STRONG SUPPORT of SB211 SD1 WITH AMENDMENTS AS RECOMMENDED BY THE COUNTY OF MAUI

DEPARTMENT OF THE PROSECUTING ATTORNEY. We ask the Committee to PASS this Bill. Thank you for the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy Sanbuenaventura, Vice Chair

Friday, March 27, 2015

3:00 p.m.

Room 325

OPPOSITION to SB 211 SD1 - CREATING FELONY RE DNA SAMPLE

Aloha Chair Rhoads, Vice Chair Sanbuenaventura and Members of the Committee!

My name is Kat Brady and I am a Community Justice Advocate. I am also the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars and the thousands of people on probation and parole. We are always mindful that more than 1,600 of Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 211 SD1 makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply. Effective 01/07/2059.

Community Alliance on Prisons opposes this bill because it is not needed. The Department of Public Safety offered the following comments at the February 2, 2015 Senate Judiciary and Labor Committee: *"Under current law, PSD has been collecting DNA samples from incarcerated offenders that have been convicted of a felony offense."*

Community Alliance on Prisons urges the committee to hold this bill.

Mahalo for this opportunity to testify.



Office of the Public Defender State of Hawaii

LATE

Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary

March 27, 2015, 3:00 p.m.

RE: S.B. 211, SD1: Relating To Forensic Identification

Chair Rhoads and Members of the Committee:

§844D-111, HRS contains language that is inconsistent. In subsection (a), a person commits the offense of refusal or failure to provide specimen for forensic identification if he intentionally or recklessly refuses or fails to provide a specimen after having received written notice informing him to comply with the statute. However, subsection (b) does not include the "intentional" or "knowing" state of mind. It states that a person who "negligently" or "recklessly fails to comply with this section shall be guilty of a misdemeanor.

Our office agrees that §844D-111, HRS should be amended to include an intentional or knowing state of mind. We do not agree that an intentional or knowing violation of this statute should be punished as a misdemeanor. Previous testimony from the Attorney General in support of the creation of a felony offense of refusal to provide a DNA specimen argued that the knowledge that a refusal to provide a specimen is a class C felony would encourage more people to comply with the law. This argument is without merit. The people who are required to provide a specimen are convicted felons. If they are incarcerated, a sample is obtained from them prior to their release. If they are not incarcerated and either fail or refuse to provide a specimen, while it is true that they will have committed a misdemeanor offense, as convicted felons, they will have violated the conditions of their probation or parole, by refusing to provide a sample, and by committing another crime. They will be subject to a revocation of their probation or parole, and may be incarcerated for the remainder of their felony term. We have not been given any statistics of how many people have not been providing specimens, and of how many people have been prosecuted under this statute. The law enforcement community has not proven to you that there is a compelling need to increase the severity of punishment for this offense.

Furthermore, we ask that the negligent state of mind be deleted from this measure. Intentional, knowing, and reckless states of mind are most commonly used in the Hawaii Penal Code. A negligent state of mind is generally not thought of as a criminal state of mind. For example, if a person makes an appointment with the police department to provide a sample, but simply forgets his appointment, has he committed a criminal act? We believe that a person should be more culpable than merely negligent to have committed an offense under this statute.

Our version of subsection (b) and (c) would read as follows:

(b) ~~[Any]~~ A person who intentionally, knowingly or recklessly fails to comply with this section shall be guilty of a misdemeanor.

(c) For purposes of this section, “intentionally”, “knowingly” and “recklessly” shall have the same meanings as in section 702-206.

For the above-mentioned reasons, the Office of the Public Defender strongly opposes S.B. 211, SD1. Thank you for the opportunity to provide input on this measure.